



POLICY BRIEF

ALASKA
POLICY FORUM

Whose “Needs” Do Certificate of Need Laws Serve?

March 13, 2023



Introduction

Alaska is one of 35 states still subject to health care certificate of need (CON) laws.¹ These regulations require that certain proposed health care facilities or expansions receive permission from the Alaska Department of Health to begin operating. However, contrary to normal licensing procedures, approval is based not on the qualifications of the facility or its workers, but on the judgment of the government that the new or expanded facility is needed in the proposed area.²

To make this decision, the Alaska Department of Health relies on input from existing local health care entities – the new or expanding organization’s competitors – rather than potential patients’ desire for another option. Unsurprisingly, some proposed health care facilities such as hospitals are stopped before they can even begin construction. Alaska has 19 health care products and facilities, from MRI scanners to neonatal intensive care units, that require certificates of need.³

¹“Certificate of Need State Laws.” National Conference of State Legislatures, December 20, 2021. <https://www.ncsl.org/health/certificate-of-need-state-laws> (Accessed 2/21/23)

²“Certificate of need laws.” *Ballotpedia*. https://ballotpedia.org/Certificate_of_need_laws (Accessed 2/21/23)

³Matthew D. Mitchell, et al. “CON Laws in 2020: About the Update,” Mercatus Center at George Mason University, February 19, 2021. <https://www.mercatus.org/publication/con-laws-2020-about-update> (Accessed 3/9/23)

The federal government originally mandated that states implement CON laws in 1974.⁴ However, by 1986, a bipartisan majority of Congress abolished the mandate and encouraged states to repeal their CON laws. Fifteen states have since repealed their CON laws, but Alaska has yet to do so.

Statistics

Below are relevant numbers comparing the remaining 35 CON states to the 15 that have permanently withdrawn them:⁵

- Even after controlling for other factors, states with any CON laws have almost 100 fewer hospital beds per 100,000 residents.
- States with CON rules have fewer hospice care facilities, fewer dialysis clinics, fewer magnetic resonance imaging (MRI) machines, and fewer ambulatory surgery centers (ASCs) per capita.^{6,7}
- Cost per service is higher in CON states, with any lower overall cost per capita attributable to lower access to care and the resulting reluctance of the population to seek medical help.
- CON laws increase overall health care spending by 3.1% and Medicare spending by 6.9%.
- When states repeal CON laws, they see a 4% drop in health expenditures over five years.

⁴ "S. 2994 (93rd): National Health Planning and Development Act," United States Congress, January 4, 1975. <https://www.govtrack.us/congress/bills/93/s2994/text/enr> (Accessed 2/21/23)

⁵ Matthew D. Mitchell. "Certificate-of-Need Laws: Are They Achieving Their Goals?" Mercatus Center at George Mason University, April 17, 2017. <https://www.mercatus.org/research/policy-briefs/certificate-need-laws-are-they-achieving-their-goals> (Accessed 3/9/23)

⁶ Melissa D A Carlson, et al. "Geographic access to hospice in the United States." *Journal of palliative medicine*, vol. 13,11 (2010): 1331-8. doi:10.1089/jpm.2010.0209

⁷ Thomas Stratmann and Christopher Koopman. "Entry Regulation and Rural Health Care." Mercatus Center at George Mason University, February 2016. <https://www.mercatus.org/system/files/Stratmann-Rural-Health-Care-v1.pdf> (Accessed 3/9/23)

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- Of the 15 states that have repealed their CON regulations, all have seen a reduction in health care costs and hospital readmissions, with no decrease in charitable care.

The Potential Effect of CON Repeal in Alaska

What would happen if Alaska abolished its entire CON code? The Mercatus Center has calculated some of the likely effects:⁸

- The average Alaskan would save \$294 per year on overall health care spending.
- MRI services would increase by 2,137, from 5,880 to 8,017.
- Computerized tomography (CT) scans would increase by 4,201, from 6,160 to 10,361.
- Post-surgery complications would decrease by 5.2%.
- The number of hospitals could increase from 25 to 35.
- The number of rural hospitals could increase from 17 to 24.

A Path Forward

Some ways Alaska can repeal its CON laws include "sunsetting" the rules by designating future dates at which they expire, phasing out aspects of the laws one at a time or simply

⁸ "Certificate of Need Laws: Alaska State Profile." Mercatus Center at George Mason University. <https://www.mercatus.org/system/files/alaska.pdf> (Accessed 2/21/23)

repealing them all at once. When it comes to repeal in Alaska, faster may be better.^{9,10} Eleven states abolished all CON mandates by 1990, and the sky did not fall in any of them.¹¹

Whichever path Alaska chooses, the rollback of these laws can only be an improvement.¹² Certificate of need laws have continually proven to serve the needs of corporations rather than communities, yet Alaskan policymakers have carried on for 40 years with detrimental laws that are no longer mandated – or even recommended – by the federal government. Policymakers have had ample evidence and opportunity to move forward, and it is high time they do so.

⁹ Matthew D. Mitchell, et al. “Phasing Out Certificate-of-Need Laws: A Menu of Options.” Mercatus Center at George Mason University, February 25, 2020. <https://www.mercatus.org/research/policy-briefs/phasing-out-certificate-need-laws-menu-options> (Accessed 3/9/23)

¹⁰ Jack Pitsor and Anna Parham. “Repeal or Retool? States Assess Certificate of Need Laws.” National Conference of State Legislators, January 12, 2022. <https://www.ncsl.org/news/details/repeal-or-retool-states-assess-certificate-of-need-laws> (Accessed 3/9/23)

¹¹ Matthew D. Mitchell and Christopher Koopman. “40 Years of Certificate-of-Need Laws Across America.” Mercatus Center at George Mason University, September 27, 2016. <https://www.mercatus.org/research/data-visualizations/40-years-certificate-need-laws-across-america> (Accessed 3/9/23)

¹² Quinn Townsend. “Policy Brief: Certificates of Need Are a 1970s Relic.” Alaska Policy Forum, September 24, 2020. <https://alaskapolicyforum.org/2020/09/con-relic-eliminate-them> (Accessed 3/9/23)

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www.AlaskaPolicyForum.org • (907) 334-5853 • Info@AlaskaPolicyForum.com